

OGC Has Reviewed

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27 January 1978

MEMORANDUM FOR: Director of Training

25X1A ATTENTION : [REDACTED]
25X1A FROM : [REDACTED]
25X1A Office of General Counsel
25X1A SUBJECT : Revision of [REDACTED]

25X1A 1. This is to inform you that the Office of General Counsel withdraws its concurrence in the revision of [REDACTED]. We take this step because the new executive order on intelligence, supplanting E.O. 11905, prohibits undisclosed participation in domestic organizations by employees of agencies within the Intelligence Community. The only exception to this prohibition is undisclosed participation undertaken pursuant to procedures established by the DCI and approved by the Attorney General. Attached please find a copy of the executive order language concerning undisclosed participation in domestic organizations; this language is underscored in red.

25X1A 2. [REDACTED] involves training for Agency employees at non-Agency facilities. Certain provisions of this regulation permit Agency personnel under cover to participate in training at non-Agency facilities. Undisclosed participation in such training by Agency personnel under cover as permitted by [REDACTED] 25X1A should conform with the procedures that will be formulated pursuant to the new executive order. Thus, it is the opinion of this Office that no further action be taken on the revision of [REDACTED] until the appropriate procedures have been promulgated. It should be noted, however, that the new executive order provides that present agency training practices permitted under E.O. 11905 may be continued until the issuance of such procedures.

3. We stand ready to assist the Office of Training in conforming this regulation to any procedures which may ultimately be established.

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Attachment

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information should be responsive to legitimate governmental needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties.

2-102. Principles of Interpretation. Sections 2-201 through 2-309 set forth limitations which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual rights and acquisition of essential information. Those sections do not authorize any activity not authorized by sections 1-101 through 1-1503 and do not provide any exemption from any other law.

2-2. Restrictions on Certain Collection Techniques.

2-201. General Provisions.

(a) The activities described in Sections 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney General. Those procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful government purposes.

(b) Activities described in sections 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States person is an agent of a foreign power.

2-202. Electronic Surveillance. The CIA may not engage in any electronic surveillance within the United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from or intended for within, the

2-207. Undisclosed Participation in Domestic Organizations. No employees may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except as permitted by procedures established pursuant to Section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee approved by the Attorney General finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall further limit undisclosed participation to cases where:

- (a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;
- (b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power; or
- (c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members.

2-208. Collection of Nonpublicly Available Information.

No agency within the Intelligence Community may collect, disseminate or store information concerning the activities of United States persons that is not available publicly, unless it does so with their consent or as permitted by procedures established pursuant to Section 2-201. Those procedures shall limit collection, storage or dissemination to the following types of information:

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(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities; or

(k) Information concerning persons or activities that pose a clear threat to any facility or personnel of an agency within the Intelligence Community. Such information may be retained only by the agency threatened and, if appropriate, by the United States Secret Service and the FBI.

2-3. Additional Restrictions and Limitations.

2-301. Tax Information. No agency within the Intelligence Community shall examine tax returns or tax information except as permitted by applicable law.

2-302. Restrictions on Experimentation. No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health, Education and Welfare. The subject's informed consent shall be documented as required by these guidelines.

2-303. Restrictions on Contracting. No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.